

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9922 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

CHANDUBHAI CHUNIBHAI PATEL

Versus

GUJARAT STATE FINANCIAL CORP.

Appearance:

1. Special Civil Application No. 9922 of 2001
MR UTPAL M PANCHAL for Petitioner No. 1
MR HS MUNSHAW for Respondent No. 1
..... for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 28/08/2003

ORAL JUDGEMENT

Rule. Service of rule is waived by learned

advocate Shri H.S. Munshaw appearing for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The petitioner has been aggrieved by an action of the respondents, whereby his residential building situated in Mangalmandir Society, Subhanpura, Vadodara, has been attached for the purpose of recovering dues of M/s. Maya Printers.

3. The facts giving rise to the present petition, in a nutshell, are as under :

3.1 A partnership firm, named, M/s. Shreeji Compu Printers had approached respondent No. 1 for getting financial aid. On 16.12.1993 respondent No. 1 sanctioned loan of Rs. 5 lakhs to M/s. Shreeji Compu Printers, and in pursuance of the said sanction, a sum of Rs. 4,27,400/- had been disbursed to M/s. Shreeji Compu Printers. One of the partners of the said firm was the son of the petitioner and, therefore, the petitioner had guaranteed repayment of the loan.

3.2 M/s. Shreeji Compu Printers wanted to transfer its business unit to M/s. Maya Printers and, therefore, it had approached respondent No. 1 with a request to relieve M/s. Shreeji Compu Printers from the said liability upon transfer of the business to M/s. Maya Printers and even M/s. Maya Printers had agreed that the liability of M/s. Shreeji Compu Printers would be taken over by it. In pursuance of such a request made by M/s. Shreeji Compu Printers, under its letters dated 25.9.1995 and 17.10.1995, respondent No. 1 had permitted M/s. Shreeji Compu Printers to transfer its business to M/s. Maya Printers. Thus, respondent No. 1 had agreed to the fact that M/s. Shreeji Compu Printers would be no more liable to make payment of the unpaid amount, which was lent to it and the said amount was to be recovered from M/s. Maya Printers. The said intimation was given to M/s. Shreeji Compu Printers under letter dated 18.10.1995. By virtue of the said letter, all existing partners of M/s. Shreeji Compu Printers were absolved from the liability to pay their dues.

3.3 It appears that M/s. Maya Printers did not make payment of the amount due and payable by it to respondent No. 1 and, therefore necessary proceedings for recovery of the amount due and payable by M/s. Maya Printers had been initiated by respondent No. 2. In the said process, and as the petitioner was a guarantor for M/s. Shreeji Compu Printers, respondent No. 2 had made an

effort to attach the residential building of the petitioner.

3.4 The petitioner has been aggrieved by the said action of respondent No. 2 and has, therefore, approached this court with a prayer that the said action of respondent No. 2 be quashed and set aside.

4. Learned advocate Shri Munshaw appearing for the respondents has submitted that according to clause 5 of the letter dated 18.10.95, which is at Annexure 'C' to the petition, while permitting M/s. Shreeji Compu Printers to transfer its business unit to M/s. Maya Printers, respondent No.1 had clarified that all other terms and conditions of the loan sanction letter would remain unchanged and, therefore, the petitioner had continued as a guarantor and, therefore, action of respondent No. 2 is just and proper, as the petitioner has not been absolved from his liability as a guarantor. Thus, learned advocate Shri Munshaw has submitted that the action initiated by the respondents against the petitioner for recovery of the amount due and payable by M/s. Shreeji Compu Printers is just and proper.

5. On the other hand, learned advocate Shri Utpal Panchal appearing for the petitioner has submitted that as respondent No. 1 had permitted M/s. Shreeji Compu Printers to transfer its business to M/s. Maya Printers, the petitioner had been absolved from his liability as the petitioner had never consented to the agreement entered into among respondent No. 1, M/s. Maya printers and M/s. Shreeji Compu Printers. It has been submitted by him that as M/s. Shreeji Compu Printers had been relieved from its liability to repay the amount payable to respondent No. 1, and as the said liability had become the liability of M/s. Maya Printers, the petitioner had been discharged from the liability as a guarantor. It has been, therefore, submitted by him that the impugned action of the respondents must be quashed and set aside.

6. I have heard the learned advocates at length and have also perused the relevant record.

7. Upon perusal of the record, it is crystal clear that while transferring its business to M/s. Maya Printers, M/s. Shreeji Compu Printers had intimated to respondent No. 1 and respondent No. 1 had accepted M/s. Maya Printers as its principal debtor. It is not in dispute that the petitioner, who was a guarantor in respect of the debt in question of M/s. Shreeji Compu

Printers, was not consulted at the time when the tripartite agreement had taken place.

8. According to the provisions of sec. 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released. It is pertinent to note that respondent No. 1 had already relieved M/s. Shreeji Compu Printers of its liability to pay the amount, and as the principal debtor had been relieved of its liability to make payment to respondent No. 1, in my opinion, the petitioner, i.e., the guarantor, was also automatically absolved from his liability to make the payment.

9. In view of the said fact, it is clear that no action could have been initiated by respondent No. 1 and, therefore, in my opinion, the impugned action of the respondents is unjust, improper and illegal. It would be, however, open to the respondents to recover the amount from M/s. Maya Printers and the guarantor, who might have stood as surety to the amount which is now payable by M/s. Maya Printers. It is, therefore, directed that the respondents shall not take any action against the petitioner for recovery of any amount.

10. An amount of Rs. 8,000/-, which has been paid by the petitioner under duress, shall be returned to the petitioner within a period of one month from the date of receipt of this order.

11. The petition is thus allowed. Rule is made absolute to the above extent with no order as to costs.

Direct service is permitted.

(A.R. Dave, J.)

(hn)